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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,293	03/17/2004	Rene-Christian Caspary	71267	3612
23872	7590	12/17/2004	EXAMINER	
MCGLEW & TUTTLE, PC 1 SCARBOROUGH STATION PLAZA SCARBOROUGH, NY 10510-0827			GILBERT, SAMUEL G	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.	Applicant(s)	
10/802,293	CASPARY ET AL.	
Examiner	Art Unit	
Samuel G Gilbert	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-17 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4,7-11,14 and 15 is/are rejected.
- 7) Claim(s) 5,6,12,13,16 and 17 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/17/2004.

- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Information Disclosure Statement***

The information disclosure statement filed 3/17/2004 has been considered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by

Gittelson (3,470,866).

Claims 1 and 8 - the examiner is taking lid -17- as a hood portion with angled portions containing portals -21- as hood limiting portions and cover -13- as a double wall portion pivotable connected at an outside of lid -17- at hinge -14-.

Claim 15 - providing a bed -23-, providing a hood -17-, providing an outer wall -13-, pivot means -14-, intermediate space between -17- and -13-, providing thermo therapy heater -H- and removing the outer wall, when the user opens -13- to remove the infant.

Claims 1-4, 7-11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Maluta et al (4,321,913).

Claim 1 - the examiner is taking elements -68- and -72- as separate hood portions, further any portion of these hood portions can be defined as a hood limiting surface. Elements -70- and -74- provide a parallel double wall portion.

Claim 2 - wipers -100-, -102- and -104- provide a seal and isolate a defined volume.

Claims 3 and 4 - air provides insulation in an intermediate space between hood and double wall portion.

Claim 8 - the examiner is taking elements -68- and -72- as separate hood portions, further any portion of these hood portions can be defined as a hood limiting surface. Elements -70- and -74- provide a wall adapter and element -84- provides a connection means.

Claim 9 - wipers -100-, -102- and -104- provide a seal and isolate a defined volume.

Claims 10 and 11 - air provides insulation in an intermediate space between hood and wall adapter.

Claims 7 and 14 - connecting elements -80-, -82-, -84-, and -86- connect and lock the inner and outer walls at a predetermined distance from one another.

#### ***Allowable Subject Matter***

Claims 5, 6, 12, 13, 16 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art does not teach or fairly suggest an apparatus as claimed including a double walled structure including a seal for isolating an intermediate volume and an insulating material having pores between the walls wherein the outer wall is detachable or pivotably connected at the hood.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents 1,387,486; 4,936,824; and 6,293,902 teach related incubator structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Samuel G Gilbert  
Primary Examiner  
Art Unit 3736

sgg